



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94264; File No. SR-BOX-2022-07]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fee Schedule on the BOX Options Market LLC Facility to Adopt Electronic Market Maker Trading Permit Fees

February 16, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 1, 2022, BOX Exchange LLC (“Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend the Fee Schedule to on the BOX Options Market LLC (“BOX”) options facility. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission’s Public Reference Room and also on the Exchange’s Internet website at <http://boxexchange.com>.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to establish a new monthly Participant Fee. Specifically, the Exchange proposes to adopt electronic Market Maker Trading Permit Fees as follows: (i) \$ 4,000 per month for Market Maker Appointments in up to and including 10 classes; (ii) \$6,000 per month for Market Maker Appointments in up to and including 40 classes; (iii) \$8,000 per month for Market Maker Appointments in up to and including 100 classes; and (iv) \$10,000 per month for Market Maker Appointments for over 100 classes. For the calculation of the monthly electronic Market Maker Trading Permit fees, the number of classes is defined as the greatest number of classes the Market Maker was appointed to quote in on any given day within the calendar month. The Exchange notes that the proposed electronic Market Maker Trading Permit fees are lower than fees assessed at competing options exchanges.⁵ The Exchange notes the current monthly Participant Fee of \$1,500 per month will

⁵ See NYSE Arca, Inc. ("NYSEArca") Fee Schedule (assessing Market Makers \$6,000 for up to 175 option issues, an additional \$5,000 for up to 350 option issues, an additional \$4,000 for up to 1,000 option issues, and an additional \$3,000 for all option issues traded on the Exchange). The Exchange notes that these fees are compounded, so Market Makers who trade in all option issues on the exchange are assessed \$18,000 per month. See also Miami International Securities Exchange, LLC ("MIAX") Fee Schedule (assessing Market Makers \$7,000 for up to 10 classes or up to 20% of classes by volume, \$12,000 for up to 40 classes or up to 35% of classes by volume, \$17,000 for up to 100 classes or up to 50% of classes by volume, and \$22,000 for over 100 classes or over 50% of classes by volume up to all classes listed on MIAX).

not apply to electronic Market Makers. Under this proposal, electronic Market Makers will pay the applicable monthly electronic Market Maker Trading Permit fee only. All other electronic Participants⁶ will continue to pay the monthly Participant Fee in Section VIII.B of the BOX Fee Schedule.

The Exchange believes that it is important to demonstrate that these fees are based on its costs and reasonable business needs that have grown substantially since the Exchange implemented the Participant Fee for all BOX Participants in 2016. The Exchange also believes the proposed electronic Market Maker Trading Permit Fees will allow BOX to offset expenses that BOX has and will incur, and that BOX is providing sufficient transparency (as described below) into how BOX determined to charge such fees. Accordingly, BOX is providing an analysis of its revenues, costs, and profitability associated with the proposed electronic Market Maker Trading Permit Fees. This analysis includes information regarding its methodology for determining the costs and revenues associated with providing access services to electronic Market Makers.⁷

In order to determine BOX's costs to provide the access services to electronic Market Makers, BOX conducted an extensive cost review in which BOX analyzed all expenses in BOX's general expense ledger to determine whether each such expense relates to Market Maker

⁶ The Exchange notes the following Participant types on BOX: Public Customers, Professional Customers, Broker Dealers, and Market Makers. Pursuant to this proposal, Public Customers, Professional Customers, and Broker Dealers will continue to be charged the \$1,500 Participant Fee detailed in Section VIII.B of the BOX Fee Schedule.

⁷ BOX notes that the structure of BOX is different from other options exchanges in the industry. Specifically, BOX Exchange LLC ("Exchange") is a fully separate legal entity from BOX Options Market LLC, the equity options facility of the Exchange. All of the Exchange's expenses support the regulatory function as the Exchange. Further, the Exchange fulfills the regulatory functions and responsibilities as a national securities exchange registered with the SEC under Section 6 of the Securities Exchange Act of 1934, and oversees the BOX Options Market. Exchange expenses are solely regulatory in nature because, due to the unique structure between the Exchange and the BOX Options Market facility, the Exchange expenses are separate from the BOX Options Market facility expenses and there can be no commingling of the funds. As such, the expenses discussed herein are solely those of BOX Options Market and not the Exchange.

access services, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the access services. The sum of all such portions of expenses represents the total cost for BOX to provide the access services to electronic Market Makers. For the avoidance of doubt, no expense amount was allocated twice.

In order to determine BOX's projected revenues associated with the proposed Market Maker Permit Fees, BOX analyzed the number of Participants currently utilizing the Trading Permits, and, utilizing a recent monthly billing cycle representative of 2021 monthly revenue, extrapolated annualized revenue on a going-forward basis utilizing the proposed Market Maker Permit Fees discussed herein. BOX does not believe it is possible or appropriate to factor into its analysis future revenue growth or decline into its projections for purposes of these calculations, given the uncertainty of such projections due to the continually changing access needs of market participants and general market participant behavior. BOX does, however, believe that it is reasonable and appropriate to factor into its analysis future cost growth or decline for expenses related to providing access services associated with the proposed electronic Market Maker Trading Permit fees. The Exchange is presenting its revenue and expense associated with providing access services to electronic Market Makers in this filing in a manner that is consistent with how BOX presents its revenue and expense in its Audited Financial Statements. BOX's most recent Audited Financial Statement is for 2020. However, since the revenues and expenses associated with the proposed electronic Market Maker Trading Permit fees were not in place in 2020, the Exchange believes its 2020 Audited Financial Statement is not representative of its current total annualized revenue and costs associated with the proposed electronic Market Maker Trading Permit fees. Accordingly, BOX believes it is more appropriate to analyze the proposed electronic Market Maker Trading Permit fees utilizing its 2021 revenue and costs, as described herein, which utilize the same presentation methodology as set forth in BOX's previously-issued

Audited Financial Statements.⁸ Based on the analysis discussed herein, the Exchange believes that the proposed electronic Market Maker Trading Permit fees are fair and reasonable because they will not result in excessive pricing or supra-competitive profit when comparing BOX's total annual expense associated with providing the access services to electronic Market Makers versus the total projected annual revenue BOX will collect for providing those services.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) and 6(b)(5) of the Act,⁹ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange established the current \$1,500 monthly Participant Fee in October 2016 for all Participants regardless of account type.¹⁰ At the time BOX established this Participant Fee, BOX's market share was 2.45% and the total volume of options contracts traded on BOX in September 2016 was 8,737,707. The Exchange established this lower (when compared to other options exchanges in the industry) Participant fee in order to encourage market participants to become Participants of BOX and register as BOX Market Makers. Since 2016, BOX has grown

⁸ For example, BOX previously noted that direct and indirect expenses described in a prior fee filing were contained in the following line items in BOX's 2018 Form 1: Technical and Operational, External IT Services, Data Processing & Communication, Depreciation, Personnel, Amortization, Rent of facilities, Office-related, Professional Services, Other. See Securities Exchange Act Release No. 88161 (February 11, 2020), 85 FR 8968 (February 18, 2020) (SR-BOX-2020-03). Accordingly, the direct and indirect expenses described in this filing is attributed to the same line items for BOX's 2021 Form 1 Amendment, which will be filed in 2022. The Exchange notes that another exchange has utilized a similar presentation methodology in a recent filing and such filing was noticed and not suspended by the Commission when the exchange adopted Trading Permit fees. See Securities Exchange Act Release Nos. 91033 (February 1, 2021), 86 FR 8455 (February 5, 2021) (SR-EMERALD-2021-03). See also SR-PEARL-2021-59.

⁹ 15 U.S.C. 78f(b)(4) and (5).

¹⁰ See Securities Exchange Act Release No. 79038 (October 4, 2016), 81 FR 70214 (October 11, 2016) (SR-BOX-2016-47).

its market share and membership base significantly. Specifically, in September 2021, BOX's market share was 5.19% and the total volume of option contracts traded on BOX in September 2021 was 42,098,287. BOX recently reviewed its current Participant Fees detailed in Section VIII of the BOX Fee Schedule. In its review, BOX determined that Participant fees would need to be raised, and a flat fee for all Participant types is no longer appropriate. Specifically, BOX found that electronic Market Makers had been benefitting from a flat Participant Fee rate while (1) consuming the most bandwidth and resources of the network; (2) transacting the vast majority of the volume on BOX; and (3) requiring the high touch network support services provided by BOX and its staff. The Exchange notes that Broker Dealers, Professional Customers, and Public Customers take up significantly less BOX resources and costs as discussed further below. In its review, BOX found that since 2016, Market Makers have had the luxury of paying the same Participant Fees as other account types despite Market Makers consuming the most resources on the BOX system and contributing to increased costs for BOX. As such, the Exchange proposes to establish higher, separate electronic Trading Permit fees for Market Makers that are more aligned with the costs and resources that Market Makers continue to place on BOX and its systems. Additionally, the Exchange believes that the proposed change will better align BOX Participant Fees with rates charged by competing options exchanges in the industry for similar Trading Permits for such market participants. As such, BOX believes the proposed electronic Market Maker Trading Permit fees are reasonable in that they are lower than comparable fees at other options exchanges.¹¹ Further, the Exchange believes that the proposal is reasonably designed to continue to compete with other options exchanges by incentivizing market participants to register as Market Makers on BOX in a manner that enables BOX to improve its overall competitiveness and strengthen market quality for all market participants.

¹¹ See supra note 5.

The proposed fees are equitable and not unfairly discriminatory as the fees apply equally to all electronic Market Makers. As such, all similarly situated electronic Market Makers, with the same number of appointments, will be subject to the same electronic Market Maker Trading Permit fee. The Exchange also believes that assessing lower fees to electronic Market Makers that quote in fewer classes is reasonable and appropriate as it will allow BOX to retain and attract smaller-scale electronic Market Makers, which are an integral component of the options industry marketplace. Since these smaller electronic Market Makers utilize less bandwidth and capacity on the BOX network due to the lower number of quoted classes, the Exchange believes it is reasonable and appropriate to offer such electronic Market Makers a lower fee. The Exchange also notes that other options exchanges assess permit fees at different rates, based upon a member's participation on that exchange,¹² and, as such, this concept is not new or novel.

Further, the Exchange believes the proposed tiered structure of the electronic Market Maker Trading Permit fees is reasonable and appropriate. Under the proposal, electronic Market Makers will be charged monthly fees based on the greatest number of classes quoted on any given trading day in a calendar month. Under the proposed fee structure, the fees increase as the number of classes quoted by a Market Maker increases. The Exchange believes this structure is reasonable because the BOX system requires increased performance and capacity in order to

¹² See e.g., NYSE Arca Options Fees and Charges, p.1 (assessing market makers \$6,000 for up to 175 option issues, an additional \$5,000 for up to 350 option issues, an additional \$4,000 for up to 1,000 option issues, an additional \$3,000 for all option issues on the exchange, and an additional \$1,000 for the fifth trading permit and for each trading permit thereafter); NYSE American Options Fee Schedule, p. 23 (assessing market makers \$8,000 for up to 60 plus the bottom 45% of option issues, an additional \$6,000 for up to 150 plus the bottom 45% of option issues, an additional \$5,000 for up to 500 plus the bottom 45% of option issues, and additional \$4,000 for up to 1,100 plus the bottom 45% of option issues, an additional \$3,000 for all issues traded on the exchange, and an additional \$2,000 for 6th to 9th ATPs; plus an addition fee for premium products). See also Cboe BZX Options Exchange ("BZX Options") assesses the Participant Fee, which is a membership fee, according to a member's ADV. See Cboe BZX Options Exchange Fee Schedule under "Membership Fees". The Participant Fee is \$500 if the member ADV is less than 5000 contracts and \$1,000 if the member ADV is equal to or greater than 5000 contracts.

provide the opportunity for Market Makers to quote in a higher number of options classes on BOX. Specifically, the more classes that are actively quoted on BOX by a Market Maker requires increased memory for record retention, increased bandwidth for optimized performance, increased functionalities on each application layer, and increased optimization with regard to surveillance and monitoring of such classes quoted. As such, basing the Market Maker Trading Permit fee on the greatest number of classes quoted in on any given day in a calendar month is reasonable and appropriate when taking into account how the increased number of quoted classes directly impact the costs and resources for BOX. Further, the Exchange believes that the proposed tiered structure is equitable and not unfairly discriminatory as all similarly situated Market Makers will be charged the same fee. The Exchange notes that another options exchange in the industry calculates Market Maker Permit Fees in the same manner.¹³

The Exchange believes that its proposal is consistent with Section 6(b)(4) of the Act because the proposed fees will not result in excessive or supra-competitive profit. The costs associated with providing access to Participants and non-Participants are extensive, have increased year-over-year, and are projected to increase year-over-year in the future. In particular, BOX has experienced a material increase in its costs in the last several years, in connection with projects to make its network environment more transparent and deterministic, based on customer demand. In order to provide this for BOX Participants and non-Participants, in 2021 alone BOX has made significant capital expenditures (“CapEx”), incurred increased ongoing operational expenditures (“OpEx”), and undertaken additional engineering research and development (“R&D”) in the following areas: (i) implementing an improved network design to ensure equalized cabling between Participants; (ii) introducing designated gateways for BOX Market Makers; and (iii) optimization of network and systems to better handle the increased quote and order flow seen through 2020 and 2021. The CapEx in 2021 was approximately

¹³ See Nasdaq Phlx LLC (“Phlx”) Fee Schedule, Section 8(B) detailing the tiered structure for Streaming Quote Trader (“SQT”) Fees.

\$720,000 for BOX. This expense does not include the significant increase in employee time and other resources necessary to maintain and service this network, which expense is captured in the operating expense discussed below. These projects, which resulted in a material increase in expense to BOX, are, among other things, intended to enhance the overall trading experience at BOX, making it a venue that market participants want to access.

Given these increased costs, BOX determined that access fees must be increased and believes the proposed electronic Market Maker Trading Permit fees are equitably allocated between other BOX Participants and Market Makers, when these fees are viewed in the context of the overall activity on BOX, as Market Makers: (1) consume the most bandwidth and resources of the network; (2) transact the vast majority of the volume on BOX; and (3) require the high touch network support services provided by BOX and its staff, including more costly network monitoring, reporting and support services, resulting in a much higher cost to BOX. The proposed electronic Market Maker Trading Permit fees are equitably allocated in this regard because the majority of customer demand comes from Market Makers, whose transactions make up a majority of the volume on BOX. Accordingly, the Exchange believes it is reasonable, equitably allocated, and not unfairly discriminatory to recoup a portion of its costs associated with providing electronic Market Makers access services. BOX believes that the proposed electronic Market Maker Trading Permit fees are equitably allocated between other BOX Participants and Market Makers, as Market Makers consume the most bandwidth and resources of the network because only Market Makers submit quotes on BOX. Specifically, BOX notes that these market participants account for greater than 99% of message traffic over the network, while other non-Market Maker market participants account for less than 1% of message traffic over the network. In BOX's experience, most BOX Participants do not have a business need for the high performance network solutions required by Market Makers. BOX's high performance network solutions and supporting infrastructure (including employee support), provides unparalleled system throughput and the capacity to handle approximately 3 million quote

messages per second. On an average day, BOX handles over 1.6 billion total messages. Of those, Market Makers generate approximately 1.59 billion messages, and other BOX Participants generate 9.5 million messages. However, in order to achieve consistent, premium network performance, BOX must build out and maintain a network that has the capacity to handle the message rate requirements of its most heavy network consumers. These billions of messages per day consume BOX's resources and significantly contribute to the overall expense for storage and network transport capabilities. Given this difference in network utilization rate, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory that Market Makers pay for a higher portion of the access costs (compared to other Participant types) designed to be recovered via the proposed electronic Market Maker Trading Permit fees.

In order to provide more detail and to quantify BOX's costs associated with providing access to the BOX network in general, BOX notes that there are material costs associated with providing the infrastructure and headcount to fully-support access to BOX. BOX incurs technology expenses related to establishing and maintaining Information Security services, enhanced network monitoring and customer reporting associated with its network technology. While some of the expense is fixed, much of the expense is not fixed, and thus increases as the expenses associated with access services for electronic Market Makers increase. For example, new Market Makers to BOX may require the purchase of additional hardware to support those Participants as well as enhanced monitoring and reporting of customer performance that BOX provides. Further, as the total number of Market Makers increase, BOX may need to increase their data center footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the cost to BOX to provide access to its Participants is not fixed. BOX believes the proposed electronic Market Maker Trading Permit fees are reasonable in order to offset a portion of the costs to BOX associated with providing access to Market Makers to its network infrastructure.

BOX Market Makers have and continue to account for the vast majority of network capacity utilization and trading activity on BOX and thus account for the majority of expenses placed on BOX systems. Specifically, in 2017 (the year after BOX established the flat Participant Fee), the total expense for providing access services for all Participant types was approximately \$819,000. Broken down further, in 2017, the total expense for providing access services to non-Market Maker Participants was approximately \$117,000 and the total expense for providing access services to Market Makers was approximately \$702,000. The Exchange has seen this disparity in access expenses between non-Market Makers and Market Makers year after year since the establishment of the Participant Fee in 2016. In 2018, the total expense for providing access services for all Participant types was approximately \$763,000 – approximately \$109,000 allocated to non-Market Maker expenses and approximately \$654,000 allocated to Market Maker expenses. In 2019, the total expense for providing access services for all Participant types was approximately \$722,000 – approximately \$103,000 allocated to non-Market Maker expenses and approximately \$619,000 allocated to Market Makers. In 2020, the total expense for providing access services for all Participant types was approximately \$1.1 million – approximately \$161,000 allocated to non-Market Maker expenses and approximately \$971,000 allocated to Market Makers. Further, as discussed herein, BOX experienced a material increase in costs in 2021 and projects a similar material increase for 2022 due to projects to make its network environment more transparent and deterministic, and increased order flow seen throughout the industry. These increased costs are reflected in the expenses related to providing access services to all BOX Participants. Specifically, in 2021, the total expense for providing access services for all Participant types was approximately \$1.29 million – approximately \$190,000 allocated to non-Market Maker expenses and approximately \$1.1 million allocated to Market Makers. Further, in the projected expenses for 2022, the total projected expense for providing access services for all Participant types is approximately \$1.89 million – approximately \$270,000 allocated to non-Market Maker expenses and \$1.62 million allocated to Market Makers. As

illustrated by these access expenses year over year, it is clear that BOX Market Makers account for the majority of expenses related to the provision of access services for BOX Participants. Accordingly, BOX believes that it is reasonable and appropriate to charge electronic Market Makers more than other BOX Participants for electronic Trading Permits to access the BOX network.

BOX believes that the proposed Market Maker Fees are fair and reasonable because they will not result in excessive pricing or supra-competitive profit, when comparing the total annual expense that BOX projects to incur in connection with providing these access services versus the total annual revenue that BOX projects it will collect in connection with the associated electronic Market Maker Trading Permit fees.

As discussed herein, BOX conducted an extensive cost review in which BOX analyzed all expenses in BOX's general expense ledger to determine whether each such expense relates to the access services for electronic Market Makers, and, if such expense did so relate, what portion (or percentage) of such expense actually supports those services, and thus bears a relationship that is, "in nature and closeness," directly related to those services. While BOX undertook this review of its expenses from 2019 through 2021, it focused on the 2021 expenses as these are the most recent and clearly demonstrate why BOX determined that access fees needed to be raised for certain Participants. The sum of all such portions of expenses represents the total cost to BOX to provide Market Makers access to the BOX network.

For 2021¹⁴, the total annual expense for providing access services to Market Makers was approximately \$1.1 million. The \$1.1 million in projected total annual expense is comprised of direct and indirect expenses. For 2021, total direct expense, (which relates to the network infrastructure, associated data center processing equipment required to support various connections, network monitoring systems and associated software required to support the access

¹⁴ BOX has not yet finalized its 2021 year end results.

services for Market Makers) was \$770,749.¹⁵ It is important to note that BOX did not allocate the entirety of its overall direct expense in 2021 to providing access services for Market Makers. Specifically, the \$770,749 direct expense is only a portion of the overall direct expenses for access service incurred by BOX as overall direct expenses in 2021 totaled approximately \$8.2 million.¹⁶ To reiterate, the Exchange did not allocate all of the direct expenses toward the cost of providing access services to Market Makers, only that portion which BOX identified as being specifically mapped to providing the access services to Market Makers, approximately 10% of the total direct expense for access services. The Exchange believes this allocation is reasonable because it represents BOX's actual cost to provide access services to its Market Makers, and not any other service, as supported by its cost review.

The indirect expense (which includes expenses related to employee compensation and benefits for full-time employees, legal expenses and other professional services, and office space and rent and other miscellaneous expenses) that BOX allocates to providing access services to electronic Market Makers in 2021 was approximately \$370,435.¹⁷ BOX notes that the overall indirect expense in 2021 totaled approximately \$18.5 million. To reiterate, the Exchange did not allocate all of the indirect expenses incurred in 2021 toward the cost of providing the access services to Market Makers. Specifically, BOX allocated approximately 2% of the total indirect expense incurred in 2021 to Market Maker access services. The Exchange notes that it took a conservative approach with regard to the allocation of indirect expenses related to providing

¹⁵ The direct expenses detailed herein are contained in the following line items: Technical and Operational, External IT Services, Data Processing & Communication, and Depreciation.

¹⁶ This overall direct expense total includes all expenses related to space rental, power usage, connections, etc., at the Exchange's data centers, trading technology support, software and hardware depreciation, and intermarket linkage and third party market data connectivity fees.

¹⁷ The indirect expenses detailed herein are contained in the following line items in the BOX 2021 Form 1: Personnel, Amortization, Rent of facilities, Office-related, Professional Services, Other expenses.

access services to Market Makers. As such, this may result in BOX under allocating an expense to the provision of access services for Market Makers and such expenses may actually be higher or increase above what BOX utilizes within this proposal. The Exchange believes this allocation is reasonable and appropriate when compared to other exchanges' allocations of similar indirect costs.¹⁸

Further, BOX analyzed projected expenses for 2022 with regard to providing access services to Market Makers. The projected total expense for providing access services to Market Makers in 2022 is approximately \$1.6 million.¹⁹ BOX notes that direct expenses associated with providing access services to Market Makers will increase 61%, while indirect expenses associated with providing access services to Market Makers are not projected to exceed 2021 costs.²⁰ BOX expects significant increases in costs for space rental, power usage, connections, etc., at the Exchange's data centers and trading technology support. These increased costs are attributed to projects including, but not limited to redesign and migration to an equalized cabling infrastructure, the optimization of order entry protocol, and upgrades to the trading servers and production network in connection with the increased order flow seen in 2020 and 2021 and expected in 2022.²¹

¹⁸ With regard to their proposed access fees, MIAX Emerald allocated approximately 15% of the total employee compensation and benefits expense, approximately 15% of the total depreciation and amortization expense, and approximately 15% of the total occupancy expense. MIAX Pearl allocated approximately 6% of the total applicable employee compensation and benefits expense, approximately 5% of the total applicable depreciation and amortization expense, and approximately 8% of the total applicable occupancy expense. As such, BOX believes its conservative allocation percentage is reasonable and appropriate.

¹⁹ The Exchange notes that these numbers are projections based on BOX's projected 2022 budget expenditures. These costs are subject to change depending on the nature of the project or service, however BOX does not expect material changes to the projected expenses.

²⁰ Expenses for 2022 are based off of BOX projected expenses and budget. These expenses are subject to change.

²¹ As discussed above, the costs of these projects are included in the total direct expenses for access services, of which only a portion were allocated to the direct expenses associated with providing access services to Market Makers.

The Exchange notes that a material portion of its total overall expense is allocated to the provision of access services (including connectivity for all BOX Participants and ports).²² The Exchange believes this is reasonable and in line, as BOX operates a technology-based business that differentiates itself from its competitors based on its trading systems that rely on access to a high-performance network, resulting in significant technology expense. The majority of BOX's expense is technology-based. As such, the Exchange believes it is reasonable to allocate a portion of its total overall expense towards the proposed electronic Market Maker Trading Permit fees.

Accordingly, based on the facts and circumstances presented above, the Exchange believes that the proposed electronic Market Maker Trading Permit Fees will not result in excessive pricing or supra-competitive profit. To illustrate, beginning January 1, 2022, on a fully annualized basis, BOX projects that its annualized revenue associated with the proposed electronic Market Maker Trading Permit Fees would be approximately \$1.23 in 2022 based on a recent billing cycle. As noted above, BOX projects that its annualized expense for providing the access services to electronic Market Makers would be approximately \$1.62 million in 2022. Accordingly, on a fully-annualized basis, the Exchange believes its total projected revenue from the proposed electronic Market Maker Trading Permit fees will not result in any profit for BOX, rather the projected revenue will only recoup a portion of the 2022 expense for providing access services to electronic Market Makers (approximately \$1.23 million revenue minus approximately \$1.62 million in expense = approximately \$388,000 loss in 2022).²³ The Exchange notes that the fee charged to each Market Maker for electronic Trading Permits may

²² No expenses related to connectivity or ports were included in BOX's overall expense calculation for purposes of this proposal.

²³ The Exchange notes that other exchanges that recently amended access fees resulted in a 24% and 10% profit margin, respectively. See Securities Exchange Act Release Nos. 93555 (November 10, 2021), 86 FR 64254 (November 17, 2021) (SR-PEARL-2021-54) and 91033 (February 1, 2021), 86 FR 8455 (February 5, 2021) (SR-EMERALD-2021-03). The Exchange notes that similar access fees are currently charged at these exchanges today.

vary from month to month depending on the number of classes in which the Market Maker was appointed to quote on any given day within the calendar month. As such, the revenue projection is not a static number, with monthly Trading Permit fees likely to fluctuate month to month.

For the avoidance of doubt, none of the expenses included herein relating to providing access services to electronic Market Makers relate to the provision of any other services offered by BOX. Stated differently, no expense amount on BOX was allocated more than once. The Exchange notes that, with respect to the BOX expenses included herein, those expenses only cover the BOX Options Market; expenses associated with the Exchange, BOX Exchange LLC, are accounted for separately and are not included within the scope of this filing.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to allocate the respective figures of each expense category described above towards the total cost to BOX of operating and supporting the network, including providing access services to electronic Market Makers because BOX performed a line-by-line item analysis of all the expenses of BOX, and has determined the expenses that directly relate to providing Market Makers access to BOX. Further, the Exchange notes that, without the specific direct and indirect items listed above, BOX would not be able to provide the access services to its Market Makers. Each of these expense items, including physical hardware, software, employee compensation and benefits, occupancy costs, and the depreciation and amortization of equipment, have been identified through a line-by-line item analysis to be integral to providing access services to its Market Makers. The proposed fees are intended to recover BOX's costs of providing Market Makers access to the BOX network. Accordingly, the Exchange believes that the proposed electronic Market Maker Trading Permit fees are fair and reasonable because they do not result in excessive pricing or supra-competitive profit, when comparing the actual costs to BOX versus the projected annual revenue from the proposed electronic Market Maker Trading Permit fees.

The Exchange believes that the proposed electronic Market Maker Trading Permit fees are reasonable, equitable, and not unfairly discriminatory because they are lower than

comparable fees at other competing options exchanges.²⁴ The proposed fees are fair and equitable and not unreasonably discriminatory because they apply equally to all Market Makers and access to BOX is offered on terms that are not unfairly discriminatory. BOX designed the fee rates in order to provide objective criteria for Market Makers of different sizes and business models that best matches their quoting activity on BOX. BOX believes that the proposed fee rates and criteria provide an objective and flexible framework that will encourage Market Makers to be appointed and quote in option classes while also equitably allocating the fees in a reasonable manner amongst Market Maker appointments to account for quoting and trading activity.²⁵

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, BOX must continually adjust its fees for services and products, in addition to order flow, to remain competitive with other exchanges. BOX believes that the proposed changes reflect this competitive environment.

Finally, the Exchange notes it is not aware of any reason why Market Makers could not simply drop their access to an exchange (or not initially access an exchange) if an exchange were to establish prices for its non-transaction fees that, in the determination of such Market Maker, did not make business or economic sense for such Market Maker to access such exchange. No options market participant – including Market Makers - are required by rule, regulation, or competitive forces to be a Participant of the Exchange. As evidence of the fact that market participants can and do drop their access to exchanges based on non-transaction fee pricing, R2G

²⁴ See supra note 5.

²⁵ Prior to filing this proposal, the Exchange notes that BOX Market Makers were made aware of the proposed tier structure and fee change. BOX received feedback from these Market Makers and adjusted the fees accordingly based on their feedback. Market Makers are not required to quote on every options exchange. BOX Market Makers choose to quote and transact business on BOX because BOX is providing increased trading opportunities for these firms.

Services LLC (“R2G”) filed a comment letter after BOX’s proposed rule changes to increase its connectivity fees (SR-BOX-2018-24, SR-BOX-2018-37, and SR-BOX-2019-04). The R2G Letter stated, “[w]hen BOX instituted a \$10,000/month price increase for connectivity; we had no choice but to terminate connectivity into them as well as terminate our market data relationship. The cost benefit analysis just didn’t make any sense for us at those new levels.” Accordingly, this example shows that if an exchange sets a certain fee for connectivity and/or other non-transaction fees for its relevant marketplace that are too high or deemed unreasonable by such market participant, market participants can choose to drop their access to such exchange if they so choose.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange believes that the proposed electronic Market Maker Trading Permit fees do not place certain market participants at a relative disadvantage to other market participants because the proposed fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the fee rates are designed in order to provide objective criteria for Market Makers of different sizes and business models that best matches their quoting activity on BOX. Further, the Exchange believes that the proposed electronic Market Maker Trading Permit fees will not impose a burden on intramarket competition because, when these fees are viewed in the context of the overall activity on BOX, Market Makers: (1) consume the most bandwidth and resources of the network; (2) transact the vast majority of the volume on BOX; and (3) require the high touch network support services provided by BOX and its staff, including more costly network monitoring, reporting and support services, resulting in a much higher cost to BOX. The Exchange notes that the majority of customer demand comes from Market Makers, whose transactions make up a majority of the volume on BOX. Further, as discussed herein, other

Participant types (Broker Dealers, Professional Customers, and Public Customers) take up significantly less BOX resources and costs. As such, the Exchange does not believe charging electronic Market Makers higher Trading Permit fees than other Participant types will impose a burden on intramarket competition.

The Exchange believes that the tiered structure of the proposed electronic Market Maker Trading Permit fees will not impose a burden on intramarket competition because the tiered structure takes into account the number of classes quoted by each individual Market Maker. As discussed herein, the BOX system requires increased performance and capacity in order to provide the opportunity for each Market Maker to quote in a higher number of options classes on BOX. Specifically, the more classes that are actively quoted on BOX by a Market Maker requires increased memory for record retention, increased bandwidth for optimized performance, increased functionalities on each application layer, and increased optimization with regard to surveillance and monitoring of such classes quoted. As such, basing the Market Maker Trading Permit fee on the greatest number of classes quoted in on any given day in a calendar month is reasonable and appropriate when taking into account how the increased number of quoted classes directly impact the costs and resources for BOX.

Inter-Market Competition

The Exchange believes the proposed Market Maker Fees do not place an undue burden on competition on other SROs that is not necessary or appropriate. In particular, options market participants are not forced to become participants of all options exchanges. The Exchange notes that it has far less Participants as compared to the much greater number of participants at other options exchanges. There are a number of large market makers and broker-dealers that are participants of other options exchange but not Participants of BOX. The Exchange is also unaware of any assertion that its existing fee levels or the proposed electronic Market Maker Fees would somehow unduly impair its competition with other options exchanges. To the contrary, if the fees charged are deemed too high by market participants, they can simply discontinue their membership with BOX.

The Exchange operates in a highly competitive market in which market participants can readily favor one of the 15 competing options venues if they deem fee levels at a particular venue to be excessive. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% market share. Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. For the month of November 2021, BOX had a market share of approximately 5.58% of executed multiply-listed equity options²⁶ and BOX believes that the ever-shifting market share among exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products, or shift order flow, in response to fee changes. In such an environment, BOX must continually adjust its fees and fee waivers to remain competitive with other exchanges and to attract order flow to the facility.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act²⁷ and Rule 19b-4(f)(2) thereunder,²⁸ because it establishes or changes a due, or fee.

²⁶ See Options Volume by Exchange available at <https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Volume-by-Exchange>.

²⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁸ 17 CFR 240.19b-4(f)(2).

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BOX-2022-07 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BOX-2022-07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F

Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-BOX-2022-07, and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

J. Matthew DeLesDernier,

Assistant Secretary.

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²⁹ 17 CFR 200.30-3(a)(12).